

SATELLITE TELEVISION COMMUNITY PROTECTION AND
PROMOTION ACT OF 2019

DECEMBER 17, 2019.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. NADLER, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 5140]

The Committee on the Judiciary, to whom was referred the bill
(H.R. 5140) to amend title 17, United States Code, to narrow the
category of households eligible to receive signals under a distant-
signal satellite license, and for other purposes, having considered
the same, report favorably thereon with an amendment and rec-
ommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Satellite Television Community Protection and Pro-
motion Act of 2019”.

SEC. 2. ELIGIBILITY TO RECEIVE SIGNALS UNDER A DISTANT-SIGNAL SATELLITE LICENSE.

(a) IN GENERAL.—Section 119 of title 17, United States Code, is amended—
(1) in subsection (a)—

(A) in paragraph (2)—

(i) in subparagraph (A)—

(I) by striking “signals, and” and inserting “signals,”;

(II) by inserting “, and the carrier provides local-into-local service to all DMAs” after “receiving the secondary transmission”; and

(III) by adding at the end the following new sentence: “Failure to reach an agreement with network stations to retransmit their signals shall not be construed to affect compliance with providing local-into-local service to all DMAs if the satellite carrier has the capability to retransmit such signals when an agreement is reached.”; and

(ii) in subparagraph (B)—

(I) by striking clauses (ii) and (iii); and

(II) by adding at the end the following:

“(ii) SHORT MARKETS.—In the case of secondary transmissions to households located in short markets, subject to clause (i), the statutory license shall be further limited to secondary transmissions of only those primary transmissions of network stations that embody the programming of networks not offered on the primary stream or the multicast stream transmitted by any network station in that market.”; and

(iii) by adding at the end the following:

“(D) TEMPORARY AND LIMITED USE OF LICENSE.—

“(i) IN GENERAL.—Notwithstanding the requirement under subparagraph (A) that a satellite carrier provide local-into-local service to all DMAs before making a secondary transmission under the license under this section, a satellite carrier that does not provide local-into-local service to all DMAs may make a covered transmission under such license if not later than 180 days after the date of the enactment of the Satellite Television Community Protection and Promotion Act of 2019 the satellite carrier—

“(I) demonstrates that it has acted reasonably and made a good faith effort to provide local-into-local service to all DMAs and that it will continue to make a good faith effort to provide local-into-local service to all DMAs; and

“(II) files a Notice of Temporary Limited Use with the Copyright Office in accordance with clause (ii).

“(ii) NOTICE OF TEMPORARY LIMITED USE.—A Notice of Temporary Limited Use filed with the Copyright Office under this subparagraph shall contain—

“(I) an affirmation that the carrier intends to make covered transmissions under the license under this section despite not providing local-into-local service to all DMAs;

“(II) a signed statement that the satellite carrier acted reasonably and made good faith efforts to provide local-into-local service to all DMAs;

“(III) a list of the designated market areas with respect to which no local-into-local service is provided by the satellite carrier; and

“(IV) a summary of actions taken by the satellite carrier to make arrangements to provide local-into-local service to all DMAs.

“(iii) PERIOD OF TEMPORARY AND LIMITED LICENSE.—

“(I) INITIAL 90-DAY PERIOD.—A satellite carrier that meets the requirements of this subparagraph may use the license under this section to make covered transmissions for a 90-day period beginning on the date such carrier files a Notice of Temporary Limited Use with the Copyright Office.

“(II) ADDITIONAL PERIODS.—The initial 90-day period described under clause (I) may be extended for additional periods of 90 days if the satellite carrier files a new Notice of Temporary Limited Use with the Copyright Office on or before the last day of such initial period, and each successive 90-day period thereafter.

“(iv) AUDIT AND VERIFICATION OF NOTICES.—The Register of Copyrights shall issue regulations that are similar in nature to the regulations issued under subsection (b)(2) to permit interested parties to verify and audit Notices of Temporary Limited Use filed by satellite carriers under this subparagraph.

“(v) CHALLENGE.—Any owner of a network station for which the primary stream or multicast stream of that network would have been transmitted by a satellite carrier under the license under this section but for the failure of that satellite carrier to provide local-into-local

service to all DMAs may bring a civil action to challenge the sufficiency of the reasonable actions and good faith efforts of that satellite carrier to provide local-into-local service to all DMAs, as such actions and efforts are described in the applicable Notice of Temporary Limited Use.

“(vi) COVERED TRANSMISSION DEFINED.—In this subparagraph, the term ‘covered transmission’ means a secondary transmission of a primary transmission made by a network station to an unserved household.”

(B) by striking paragraphs (3), (6)(E), (9), (10), and (13); and

(C) by redesignating paragraphs (4), (5), (6), (7), (8), (11), (12), and (14) as paragraphs (3) through (10), respectively;

(2) in subsection (c)(1)(E)—

(A) by striking the comma after “in the agreement”;

(B) by striking “until December 31, 2019, or”; and

(C) by striking “, whichever is later” and inserting “until the subscriber for which the royalty is payable is no longer eligible to receive a secondary transmission pursuant to the license under this section”;

(3) in subsection (d)—

(A) in paragraph (10)—

(i) in subparagraph (D), by striking “subsection (a)(11)” and inserting “subsection (a)(8)”;

(ii) by striking subparagraphs (A), (B), (C), and (E);

(iii) by redesignating subparagraph (D) as subparagraph (A); and

(iv) by adding at the end the following:

“(B) is a subscriber located in a short market.”;

(B) by striking paragraph (13);

(C) by redesignating paragraphs (14) and (15) as paragraphs (13) and (14), respectively; and

(D) by adding at the end the following:

“(15) LOCAL-INTO-LOCAL SERVICE TO ALL DMAS.—The term ‘local-into-local service to all DMAs’ has the meaning given such term in subsection (f)(7).

“(16) SHORT MARKET.—The term ‘short market’ means a local market in which programming of one or more of the four most widely viewed television networks nationwide is not offered on either the primary stream or multicast stream transmitted by any network station in that market.”;

(4) by striking subsections (e) and (h); and

(5) by redesignating subsections (f) and (g) as subsections (e) and (f).

(b) PREVIOUSLY COVERED SUBSCRIBERS UNDER THE STELA REAUTHORIZATION ACT OF 2014.—

(1) IN GENERAL.—A subscriber of a satellite carrier who receives the secondary transmission of a network station under the statutory license in section 119 of title 17, United States Code, as in effect on the day before the date of the enactment of this Act, and to whom subsection (a)(2)(B) of such section, as amended by subsection (a), does not apply, shall continue to be eligible to receive that secondary transmission from such carrier under such license, and at the royalty rate established for such license by the Copyright Royalty Board or voluntary agreement, as applicable, until the date that is the earlier of—

(A) 180 days after the date of the enactment of this Act; or

(B) the date on which such carrier provides local-into-local service to all DMAs.

(2) DEFINITIONS.—In this subsection, the terms “satellite carrier”, “subscriber”, “secondary transmission”, “network station”, and “local-into-local service to all DMAs” have the meaning given those terms in section 119 of title 17, United States Code.

(c) CONFORMING AMENDMENTS.—Title 17, United States Code, is further amended—

(1) in section 119, as amended by subsection (a)—

(A) in subsection (a)—

(i) in paragraph (1), by striking “paragraphs (4), (5), and (7)” and inserting “paragraphs (3), (4), and (6)”;

(ii) in paragraph (2), by striking “paragraphs (4), (5), (6), and (7)” and inserting “paragraphs (3), (4), (5), and (6)”;

(B) in subsection (g), by striking “subsection (a)(7)(B)” each place it appears and inserting “subsection (a)(5)(B)”;

(2) in section 501(e), by striking “section 119(a)(5)” and inserting “section 119(a)(3)”.

Purpose and Summary

The compulsory license in section 119 of the Copyright Act, 17 U.S.C. § 119, which allows a satellite carrier to retransmit distant broadcast signals to an “unserved household,” is set to expire on December 31, 2019.¹ When this statutory license was created in 1988, the satellite television industry was in its infancy. Since then, technology has developed to allow satellite carriers to more easily retransmit local (instead of distant) television signals into local markets. The television industry overall has also evolved with the proliferation of “over-the-top” services that deliver television through the Internet, which, since it is generally unregulated, shows the marketplace’s ability to facilitate the licensing of rights to retransmit television stations, including broadcast stations. In light of these changed circumstances, several categories of viewers falling within the definition of “unserved household” are no longer appropriately considered unserved—instead, section 119 is being used to provide them with distant broadcast signals when local broadcast signals are available, the technology to retransmit them exists, and either free market-based negotiations or a separate statutory license under 17 U.S.C. § 122 would permit their retransmission. This has the effect of denying viewers access to local news, weather, and emergency alerts. In contrast, other categories of viewers covered by the definition of “unserved household” may still need the statutory license provided by section 119 to ensure access to broadcast network television. These categories include viewers in television markets lacking one or more local broadcasters—“short markets”—and viewers without a fixed location—those in recreational vehicles or commercial trucks.

In light of these competing considerations, H.R. 5140, the “Satellite Television Community Protection and Promotion Act of 2019,” narrows the households eligible to receive out-of-state programming under the license to these final two categories of viewers and makes this reauthorization permanent. In addition, to promote the retransmission of local broadcast signals, the Act conditions satellite carriers’ use of the new, more narrow section 119 statutory license on providing access to local broadcast programming nationwide where it is available.

Background and Need for the Legislation

Most satellite television subscribers receive local broadcast programming that is retransmitted from their local network stations. When a satellite carrier provides such “local service,” subscribers have access to important local news, local weather, and local emergency information. For some (typically rural) subscribers, instead of seeing news, weather, or emergency information from their own towns, they get retransmissions of “distant” programming from outside of their local market. Those subscribers see network programming from a larger, sometimes much farther, market like New York or Los Angeles instead.

The subscribers subject to “distant” programming are in households covered by section 119 of the Copyright Act. Section 119 es-

¹ Satellite Television Extension and Localism Act Reauthorization Act of 2014 §§201, 202, Pub. L. No. 113–200, 128 Stat. 2059 (2014).

establishes a compulsory license that allows satellite carriers to retransmit to “unserved households” broadcast television programming from television stations located outside of the unserved household’s local market.² Enacted as a temporary provision in 1988,³ section 119 has required reauthorization approximately every five years. Congress’s latest reauthorization, the Satellite Television Extension and Localism Act Reauthorization Act (“STELAR”) of 2014, is set to expire on December 31, 2019.⁴

The section 119 license is an exception to the general copyright principle that copyright owners control the distribution and dissemination of their works. Under the license, satellite carriers pay government-set royalty rates for the distant programming, and they are relieved from needing to negotiate licenses with individual copyright owners.⁵

Congress created the section 119 license during the satellite industry’s nascency to allow satellite television to better compete with cable. Since then, the satellite industry has matured with two major players, DISH Network and AT&T’s DirecTV. Technological limitations have likewise dissolved such that “local service”—where subscribers receive local programming via satellite transmission—is pervasive and technologically feasible in all 210 geographic television markets (known as “designated market areas”). DISH Network provides local service in all 210 designated market areas; DirecTV offers local service in 198.⁶

Under section 119, “unserved households” that are eligible for the license include households that do not receive sufficiently strong over-the-air signals; recreational vehicles and commercial trucks; households that receive a waiver from a local network affiliate to receive a distant signal; and households that are in markets where local service is available but that have been “grandfathered” into eligibility.⁷ Households in seven “short markets”—that is, markets where one or more of the four broadcast networks is not offered locally—also receive distant broadcast programming under the section 119 license.⁸ DISH and AT&T estimate that approximately 870,000 subscribers receive one or more stations through the section 119 license.⁹ When asked by Chairman Nadler and Ranking Member Collins in a letter last spring, neither carrier pro-

² 17 U.S.C. § 119(a)(2)(A)–(B) (2019).

³ Satellite Home Viewer Act of 1988, Pub. L. No. 100–667, 102 Stat. 3949 (1988).

⁴ Satellite Television Extension and Localism Act Reauthorization Act of 2014, Pub. L. No. 113–200, 128 Stat. 2059 (2014).

⁵ The Copyright Office has administered the compulsory license since it was established in 1988, which has included collecting statements of account and royalties from satellite carriers and distributing them to the appropriate rights holders. *Licensing*, U.S. Copyright Office, <https://www.copyright.gov/licensing/> (last visited Dec. 3, 2019).

⁶ The designated market areas to which DirecTV does not provide local service include: Alpena, MI; Bowling Green, KY; Casper-Riverton, WY; Cheyenne, WY-Scottsbluff, NE; Glendive, MT; Grand Junction-Montrose, CO; Helena, MT; North Platte, NE; Ottumwa, IA-Kirksville, MO; Presque Isle, ME; San Angelo, TX; and Victoria, TX. See John Eggerton, *Senators Press AT&T/DirecTV for Small-Market, Remote Area TV Signals*, *Broadcasting & Cable* (Mar. 14, 2019), <https://www.broadcastingcable.com/news/senators-press-at-t-directv-for-small-market-remote-area-tv-signals>.

⁷ 17 U.S.C. § 119(d)(10)(B)–(E), (g)(2)(E).

⁸ The seven “short markets” are: Alpena, MI; Glendive, MT; Harrisonburg, VA/WV; Mankato, MN; Parkersburg, OH/WV; Presque Isle, ME; and Zanesville, OH. See Letter from Jeffrey H. Blum, Senior Vice President, DISH Network Corp., to Jerrold Nadler, Chairman, & Doug Collins, Ranking Member, U.S. House of Representatives Comm. on the Judiciary (Apr. 19, 2019).

⁹ *Id.*; Letter from Timothy P. McKone, Exec. Vice President, AT&T Services, Inc., to Jerrold Nadler, Chairman, & Doug Collins, Ranking Member, U.S. House of Representatives Comm. on the Judiciary 1 (Apr. 19, 2019).

vided a breakdown of the number of subscribers per category, citing concerns that such information was competitively sensitive.¹⁰

The Copyright Office has reported a decline in section 119 royalties reported by satellite carriers of between 85% and 99.5% since 2014.¹¹ The television marketplace also has transformed since section 119's last reauthorization in 2014, including the proliferation of "over-the-top" services that deliver television through the Internet, such as Hulu and Netflix, which operate absent any statutory license.¹² It is the Copyright Office's view that the section 119 license should sunset as intended and allow free-market negotiations take place.

Broadcasters, some rural groups, and some Members of Congress who represent areas subject to the license have also urged Congress not to reauthorize section 119 so that subscribers can get satellite access to their local stations. For example, in a letter to the House Committee on the Judiciary and the House Committee on Energy and Commerce, Rep. David Loebsack (D-IA), wrote:

It is apparent that the existence of the distant signal license creates a disincentive for DIRECTV to offer my constituents the broadcast channels from their local DMA. . . . I'd ask that you keep in mind how this law impacts viewers in my district, as well as viewers in the 11 other neglected markets across the country, from accessing important local broadcast programming via satellite.¹³

The Rural and Agriculture Council of America raised similar localism concerns in its outreach to Congress this summer, stating:

The policies of STELAR—first enacted before the rise of even the early Internet—have been surpassed by technological advances and now cause definite harm to our rural communities. Rural Americans rely on local broadcasting for critical information and news about our local communities and, especially when we are out in the field, up-to-the minute weather and emergency information. This is critical local information not only for the productivity of our lands, but also for the safety of our livestock and families. Yet, because of STELAR, major satellite television providers are carrying television stations from outside these rural areas rather than the local stations themselves.¹⁴

H.R. 5140 accounts for the need to prioritize access to local programming and acknowledges the vulnerabilities that some households might face in a purely market-based system. H.R. 5140 does so by first conditioning a satellite carrier's use of the license on the carrier's provision of local service in all 210 designated market

¹⁰ Letter from Jeffrey H. Blum, *supra* note 8; Letter from Timothy P. McKone, *supra* note 9.

¹¹ Letter from Karyn A. Temple, Register of Copyrights, U.S. Copyright Office, to Jerrold Nadler, Chairman, & Doug Collins, Ranking Member, U.S. House of Representatives Comm. on the Judiciary 2 (June 3, 2019).

¹² *Id.* at 3.

¹³ Letter from Dave Loebsack, Member of Congress, to Frank Pallone, Jr., Chairman, & Greg Walden, Ranking Member, H. Comm. on Energy & Commerce, and Jerrold Nadler, Chairman, & Doug Collins, Ranking Member, H. Comm. on the Judiciary (May 30, 2019).

¹⁴ Letter from Rural & Agriculture Council of America et al., to Frank Pallone, Jr., Chairman, & Greg Walden, Ranking Member, H. Comm. on Energy & Commerce, and Roger Wicker, Chairman, & Maria Cantwell, Ranking Member, S. Comm. on Commerce, Sci., & Transp. (June 3, 2019).

areas. The bill then lets the license expire for almost all covered households, with two exceptions: (1) recreational vehicles and commercial trucks, whose subscriber size may not be large enough to make free-market negotiations worth the effort, and (2) households in short markets that by definition do not have local alternatives for at least one network. The license would be permanent for these two groups.

For households no longer covered by section 119, the narrowed license would likely mean that these viewers would get local broadcast signals instead of imported, distant signals. A local-signal satellite license is available to satellite carriers under section 122 of the Copyright Act,¹⁵ which DISH already uses in all 210 markets and which DirecTV uses in 198 markets.

To address concerns that a year-end expiration of the section 119 license might be disruptive in the short-term, H.R. 5140 provides a 180-day transition period during which a satellite carrier can continue to use the license for households no longer covered under the bill, giving the carrier time to transition to offering local service in all designated market areas. If a satellite carrier is unable to offer the requisite local service within that 180-day period, but it has acted reasonably and made good faith efforts to do so, the carrier may temporarily use the license for covered households for a 90-day period after filing a notice with the Copyright Office that, among other things, outlines its efforts to provide local service. The carrier can file for subsequent temporary 90-day licenses by filing further notices.

Hearings

The Committee on the Judiciary held no hearings on H.R. 5140 in the 116th Congress, but received testimony on the upcoming expiration of the section 119 license from the Register of Copyrights, Karyn A. Temple, on June 26, 2019.

Committee Consideration

On November 20, 2019, the Committee met in open session and ordered the bill, H.R. 5140, favorably reported as amended, by a voice vote, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that no rollcall votes occurred during the Committee's consideration of H.R. 5140.

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

¹⁵ 17 U.S.C. § 122.

New Budget Authority and Tax Expenditures and Congressional Budget Office Cost Estimate

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office. The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

Duplication of Federal Programs

No provision of H.R. 5140 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 5140 would modify the compulsory license in section 119 of the Copyright Act by conditioning satellite carriers' use of the license on providing access to local broadcast programming nationwide and narrowing the households eligible to receive out-of-state programming under the license.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 5140 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Sec. 1. Short Title. Section 1 sets forth the short title of the bill as the “Satellite Television Community Protection and Promotion Act of 2019”.

Sec. 2. Eligibility to Receive Signals Under a Distant-Signal Satellite License. Section 2 makes several amendments to 17 U.S.C. § 119.

Section 2(a)(1)(A)(i) amends 17 U.S.C. § 119(a)(2) to condition a satellite carrier's eligibility to use the section 119 license to carry distant signals to “unserved households” (as subsequently redefined) on the carrier's retransmission of local television broadcast stations (i.e., providing “local service”) in all 210 designated market areas. This clause notes that a carrier's failure to reach a retransmission consent agreement with a broadcast station does not affect

the carrier's compliance with the local service requirement if the carrier has the technical capability to provide local service once such an agreement is reached.

Section(a)(1)(A)(ii) removes language related to the eligibility of households no longer covered under the bill—namely, households that did not receive sufficiently strong over-the-air signals and households under the C-band exemption. This clause also clarifies that use of the license for subscribers in short markets is limited to secondary transmissions of only those networks that are not offered in the local market.

Section (a)(1)(A)(iii) establishes a mechanism by which a satellite carrier that has not implemented local service in all designated market areas can temporarily continue to carry distant signals to “unserved households.” Under this provision, to temporarily use the license, the carrier must demonstrate that it has acted reasonably and made good faith efforts to provide the requisite local service and file a Notice of Temporary Limited Use with the Copyright Office within 180 days following the enactment of the bill. The carrier's notice must include an affirmation that it intends to provide distant signals under the section 119 license; a signed statement that it has acted reasonably and made good faith efforts to provide the requisite local service; a list of the designated market areas to which it does not provide local service; and a summary of the actions it has taken to provide local service to all designated market areas. The temporary license lasts 90 days and can be extended for additional 90-day periods if the carrier files a new notice. An owner of a network station that could have been retransmitted but for the carrier's failure to provide local service may challenge the sufficiency of the carrier's efforts in a civil action.

Section 2(a)(1)(B)–(C) strikes certain language no longer applicable under the narrowed license—namely, language related to subscribers previously eligible despite the availability of local service (§ 119(a)(3), (13)) and language related to signal measurements, which are no longer needed because there are no “unserved households” that are defined solely in relation to broadcast signal strength (§ 119(a)(9)–(10)).

Section 2(a)(2) amends 17 U.S.C. § 119(c)(1)(E) to state that voluntary agreements that were entered into under the license are in effect under the terms of those agreements until the subscriber is no longer eligible to receive secondary transmissions under the bill.

Section 2(a)(3) amends the definition of “unserved household” to be limited to subscribers in short markets and RVs/commercial trucks while removing other categories that are no longer needed. The term “local-into-local service to all DMAs” is defined via a cross-reference to the same requirement in (redesignated) subsection (f), where providing local-into-local service was previously required for certain satellite carriers to continue to use the section 119 license under the Satellite Television Extension and Localism Act of 2010, Pub. L. 111–175. The term “short market” is defined as a market missing one or more local broadcast networks, where availability of a local broadcast network is defined with reference to the broadcast being offered on the primary stream or multicast stream, reflecting the current practice of which types of local broadcast stations are carried under the statutory license for local-into-local carriage under 17 U.S.C. § 122.

Section 2(a)(4)–(5) strikes 17 U.S.C. § 119(e) and 17 U.S.C. § 119(h). Subsection (e) refers to households no longer covered under the bill, while subsection (h) contains the license’s expiration date. The removal of subsection (h) makes the modified section 119 license for RVs/commercial trucks and households in short markets permanent.

Section 2(b)(1) establishes a 180-day transition period during which a household that is not covered under the bill’s narrowed license remains eligible to receive retransmissions under the distant-signal license regardless of the status of the satellite carrier’s provision of local service in all designated market areas. The household’s eligibility would expire after those 180 days or once the satellite carrier provides local service in all 210 designated market areas, whichever is sooner.

Section 2(b)(2) incorporates several definitions by reference from section 119, since section 2(b) of the bill is uncodified.

Section 2(c) provides several conforming amendments.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, and existing law in which no change is proposed is shown in roman):

TITLE 17, UNITED STATES CODE

* * * * *

CHAPTER 1—SUBJECT MATTER AND SCOPE OF COPYRIGHT

* * * * *

§ 119. Limitations on exclusive rights: Secondary transmissions of distant television programming by satellite

(a) SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS.—

(1) NON-NETWORK STATIONS.—Subject to the provisions of **¶**paragraphs (4), (5), and (7) *paragraphs (3), (4), and (6)* of this subsection and section 114(d), secondary transmissions of a performance or display of a work embodied in a primary transmission made by a non-network station shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing or for viewing in a commercial establishment, with regard to secondary transmissions the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station signals, and the carrier makes a direct or indirect charge for each retransmission service to each subscriber receiving the secondary transmission or to a distributor that has contracted with the carrier for direct or indirect delivery of the secondary transmission to the public

for private home viewing or for viewing in a commercial establishment.

(2) NETWORK STATIONS.—

(A) IN GENERAL.—Subject to the provisions of subparagraph (B) of this paragraph and ~~paragraphs (4), (5), (6), and (7)]~~ *paragraphs (3), (4), (5), and (6)* of this subsection and section 114(d), secondary transmissions of a performance or display of a work embodied in a primary transmission made by a network station shall be subject to statutory licensing under this section if the secondary transmission is made by a satellite carrier to the public for private home viewing, with regard to secondary transmissions the satellite carrier is in compliance with the rules, regulations, or authorizations of the Federal Communications Commission governing the carriage of television broadcast station ~~signals, and]~~ *signals*, the carrier makes a direct or indirect charge for such retransmission service to each subscriber receiving the secondary transmission, *and the carrier provides local-into-local service to all DMAs. Failure to reach an agreement with network stations to retransmit their signals shall not be construed to affect compliance with providing local-into-local service to all DMAs if the satellite carrier has the capability to retransmit such signals when an agreement is reached.*

(B) SECONDARY TRANSMISSIONS TO UNSERVED HOUSEHOLDS.—

(i) IN GENERAL.—The statutory license provided for in subparagraph (A) shall be limited to secondary transmissions of the signals of no more than two network stations in a single day for each television network to persons who reside in unserved households.

~~[(ii) ACCURATE DETERMINATIONS OF ELIGIBILITY.—~~

~~[(I) ACCURATE PREDICTIVE MODEL.—In determining presumptively whether a person resides in an unserved household under subsection (d)(10)(A), a court shall rely on the Individual Location Longley-Rice model set forth by the Federal Communications Commission in Docket No. 98–201, as that model may be amended by the Commission over time under section 339(c)(3) of the Communications Act of 1934 to increase the accuracy of that model.~~

~~[(II) ACCURATE MEASUREMENTS.—For purposes of site measurements to determine whether a person resides in an unserved household under subsection (d)(10)(A), a court shall rely on section 339(c)(4) of the Communications Act of 1934.~~

~~[(III) ACCURATE PREDICTIVE MODEL WITH RESPECT TO DIGITAL SIGNALS.—Notwithstanding subclause (I), in determining presumptively whether a person resides in an unserved household under subsection (d)(10)(A) with respect to digital signals, a court shall rely on a predictive model set forth by the Federal Communications Commission pursuant to a rulemaking as provided in section~~

339(c)(3) of the Communications Act of 1934 (47 U.S.C. 339(c)(3)), as that model may be amended by the Commission over time under such section to increase the accuracy of that model. Until such time as the Commission sets forth such model, a court shall rely on the predictive model as recommended by the Commission with respect to digital signals in its Report to Congress in ET Docket No. 05–182, FCC 05–199 (released December 9, 2005).

[(iii) C-BAND EXEMPTION TO UNSERVED HOUSEHOLDS.—

[(I) IN GENERAL.—The limitations of clause (i) shall not apply to any secondary transmissions by C-band services of network stations that a subscriber to C-band service received before any termination of such secondary transmissions before October 31, 1999.

[(II) DEFINITION.—In this clause, the term “C-band service” means a service that is licensed by the Federal Communications Commission and operates in the Fixed Satellite Service under part 25 of title 47, Code of Federal Regulations.]

(ii) *SHORT MARKETS.*—*In the case of secondary transmissions to households located in short markets, subject to clause (i), the statutory license shall be further limited to secondary transmissions of only those primary transmissions of network stations that embody the programming of networks not offered on the primary stream or the multicast stream transmitted by any network station in that market.*

(C) SUBMISSION OF SUBSCRIBER LISTS TO NETWORKS.—

(i) *INITIAL LISTS.*—A satellite carrier that makes secondary transmissions of a primary transmission made by a network station pursuant to subparagraph (A) shall, not later than 90 days after commencing such secondary transmissions, submit to the network that owns or is affiliated with the network station a list identifying (by name and address, including street or rural route number, city, State, and 9-digit zip code) all subscribers to which the satellite carrier makes secondary transmissions of that primary transmission to subscribers in unserved households.

(ii) *MONTHLY LISTS.*—After the submission of the initial lists under clause (i), the satellite carrier shall, not later than the 15th of each month, submit to the network a list, aggregated by designated market area, identifying (by name and address, including street or rural route number, city, State, and 9-digit zip code) any persons who have been added or dropped as subscribers under clause (i) since the last submission under this subparagraph.

(iii) *USE OF SUBSCRIBER INFORMATION.*—Subscriber information submitted by a satellite carrier under this subparagraph may be used only for purposes of moni-

toring compliance by the satellite carrier with this subsection.

(iv) **APPLICABILITY.**—The submission requirements of this subparagraph shall apply to a satellite carrier only if the network to which the submissions are to be made places on file with the Register of Copyrights a document identifying the name and address of the person to whom such submissions are to be made. The Register shall maintain for public inspection a file of all such documents.

(D) TEMPORARY AND LIMITED USE OF LICENSE.—

(i) **IN GENERAL.**—*Notwithstanding the requirement under subparagraph (A) that a satellite carrier provide local-into-local service to all DMAs before making a secondary transmission under the license under this section, a satellite carrier that does not provide local-into-local service to all DMAs may make a covered transmission under such license if not later than 180 days after the date of the enactment of the Satellite Television Community Protection and Promotion Act of 2019 the satellite carrier—*

(I) demonstrates that it has acted reasonably and made a good faith effort to provide local-into-local service to all DMAs and that it will continue to make a good faith effort to provide local-into-local service to all DMAs; and

(II) files a Notice of Temporary Limited Use with the Copyright Office in accordance with clause (ii).

(ii) **NOTICE OF TEMPORARY LIMITED USE.**—*A Notice of Temporary Limited Use filed with the Copyright Office under this subparagraph shall contain—*

(I) an affirmation that the carrier intends to make covered transmissions under the license under this section despite not providing local-into-local service to all DMAs;

(II) a signed statement that the satellite carrier acted reasonably and made good faith efforts to provide local-into-local service to all DMAs;

(III) a list of the designated market areas with respect to which no local-into-local service is provided by the satellite carrier; and

(IV) a summary of actions taken by the satellite carrier to make arrangements to provide local-into-local service to all DMAs.

(iii) **PERIOD OF TEMPORARY AND LIMITED LICENSE.**—

(I) INITIAL 90-DAY PERIOD.—*A satellite carrier that meets the requirements of this subparagraph may use the license under this section to make covered transmissions for a 90-day period beginning on the date such carrier files a Notice of Temporary Limited Use with the Copyright Office.*

(II) ADDITIONAL PERIODS.—*The initial 90-day period described under clause (I) may be extended for additional periods of 90 days if the satellite carrier files a new Notice of Temporary Limited*

Use with the Copyright Office on or before the last day of such initial period, and each successive 90-day period thereafter.

(iv) **AUDIT AND VERIFICATION OF NOTICES.**—*The Register of Copyrights shall issue regulations that are similar in nature to the regulations issued under subsection (b)(2) to permit interested parties to verify and audit Notices of Temporary Limited Use filed by satellite carriers under this subparagraph.*

(v) **CHALLENGE.**—*Any owner of a network station for which the primary stream or multicast stream of that network would have been transmitted by a satellite carrier under the license under this section but for the failure of that satellite carrier to provide local-into-local service to all DMAs may bring a civil action to challenge the sufficiency of the reasonable actions and good faith efforts of that satellite carrier to provide local-into-local service to all DMAs, as such actions and efforts are described in the applicable Notice of Temporary Limited Use.*

(vi) **COVERED TRANSMISSION DEFINED.**—*In this subparagraph, the term “covered transmission” means a secondary transmission of a primary transmission made by a network station to an unserved household.*

[(3) **STATUTORY LICENSE WHERE RETRANSMISSIONS INTO LOCAL MARKET AVAILABLE.**—

[(A) **RULES FOR SUBSCRIBERS TO SIGNALS UNDER SUBSECTION (E).**—

[(i) **FOR THOSE RECEIVING DISTANT SIGNALS.**—*In the case of a subscriber of a satellite carrier who is eligible to receive the secondary transmission of the primary transmission of a network station solely by reason of subsection (e) (in this subparagraph referred to as a “distant signal”), and who, as of October 1, 2004, is receiving the distant signal of that network station, the following shall apply:*

[(I) *In a case in which the satellite carrier makes available to the subscriber the secondary transmission of the primary transmission of a local network station affiliated with the same television network pursuant to the statutory license under section 122, the statutory license under paragraph (2) shall apply only to secondary transmissions by that satellite carrier to that subscriber of the distant signal of a station affiliated with the same television network—*

[(aa) *if, within 60 days after receiving the notice of the satellite carrier under section 338(h)(1) of the Communications Act of 1934, the subscriber elects to retain the distant signal; but*

[(bb) *only until such time as the subscriber elects to receive such local signal.*

[(II) *Notwithstanding subclause (I), the statutory license under paragraph (2) shall not apply*

with respect to any subscriber who is eligible to receive the distant signal of a television network station solely by reason of subsection (e), unless the satellite carrier, within 60 days after the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004, submits to that television network a list, aggregated by designated market area (as defined in section 122(j)(2)(C)), that—

[(aa) identifies that subscriber by name and address (street or rural route number, city, State, and zip code) and specifies the distant signals received by the subscriber; and

[(bb) states, to the best of the satellite carrier's knowledge and belief, after having made diligent and good faith inquiries, that the subscriber is eligible under subsection (e) to receive the distant signals.

[(ii) FOR THOSE NOT RECEIVING DISTANT SIGNALS.—

In the case of any subscriber of a satellite carrier who is eligible to receive the distant signal of a network station solely by reason of subsection (e) and who did not receive a distant signal of a station affiliated with the same network on October 1, 2004, the statutory license under paragraph (2) shall not apply to secondary transmissions by that satellite carrier to that subscriber of the distant signal of a station affiliated with the same network.

[(B) RULES FOR LAWFUL SUBSCRIBERS AS OF DATE OF ENACTMENT OF 2010 ACT.—In the case of a subscriber of a satellite carrier who, on the day before the date of the enactment of the Satellite Television Extension and Localism Act of 2010, was lawfully receiving the secondary transmission of the primary transmission of a network station under the statutory license under paragraph (2) (in this subparagraph referred to as the “distant signal”), other than subscribers to whom subparagraph (A) applies, the statutory license under paragraph (2) shall apply to secondary transmissions by that satellite carrier to that subscriber of the distant signal of a station affiliated with the same television network, and the subscriber's household shall continue to be considered to be an unserved household with respect to such network, until such time as the subscriber elects to terminate such secondary transmissions, whether or not the subscriber elects to subscribe to receive the secondary transmission of the primary transmission of a local network station affiliated with the same network pursuant to the statutory license under section 122.

[(C) FUTURE APPLICABILITY.—

[(i) WHEN LOCAL SIGNAL AVAILABLE AT TIME OF SUBSCRIPTION.—The statutory license under paragraph (2) shall not apply to the secondary transmission by a satellite carrier of the primary transmission of a network station to a person who is not a subscriber lawfully re-

ceiving such secondary transmission as of the date of the enactment of the Satellite Television Extension and Localism Act of 2010 and, at the time such person seeks to subscribe to receive such secondary transmission, resides in a local market where the satellite carrier makes available to that person the secondary transmission of the primary transmission of a local network station affiliated with the same network pursuant to the statutory license under section 122.

[(ii) WHEN LOCAL SIGNAL AVAILABLE AFTER SUBSCRIPTION.—In the case of a subscriber who lawfully subscribes to and receives the secondary transmission by a satellite carrier of the primary transmission of a network station under the statutory license under paragraph (2) (in this clause referred to as the “distant signal”) on or after the date of the enactment of the Satellite Television Extension and Localism Act of 2010, the statutory license under paragraph (2) shall apply to secondary transmissions by that satellite carrier to that subscriber of the distant signal of a station affiliated with the same television network, and the subscriber’s household shall continue to be considered to be an unserved household with respect to such network, until such time as the subscriber elects to terminate such secondary transmissions, but only if such subscriber subscribes to the secondary transmission of the primary transmission of a local network station affiliated with the same network within 60 days after the satellite carrier makes available to the subscriber such secondary transmission of the primary transmission of such local network station.

[(D) OTHER PROVISIONS NOT AFFECTED.—This paragraph shall not affect the applicability of the statutory license to secondary transmissions to unserved households included under paragraph (11).

[(E) WAIVER.—A subscriber who is denied the secondary transmission of a network station under subparagraph (B) or (C) may request a waiver from such denial by submitting a request, through the subscriber’s satellite carrier, to the network station in the local market affiliated with the same network where the subscriber is located. The network station shall accept or reject the subscriber’s request for a waiver within 30 days after receipt of the request. If the network station fails to accept or reject the subscriber’s request for a waiver within that 30-day period, that network station shall be deemed to agree to the waiver request. Unless specifically stated by the network station, a waiver that was granted before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004 under section 339(c)(2) of the Communications Act of 1934 shall not constitute a waiver for purposes of this subparagraph.

[(F) AVAILABLE DEFINED.—For purposes of this paragraph, a satellite carrier makes available a secondary transmission of the primary transmission of a local station

to a subscriber or person if the satellite carrier offers that secondary transmission to other subscribers who reside in the same 9-digit zip code as that subscriber or person.】

【(4)】 (3) NONCOMPLIANCE WITH REPORTING AND PAYMENT REQUIREMENTS.—Notwithstanding the provisions of paragraphs (1) and (2), the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission made by a non-network station or a network station and embodying a performance or display of a work is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, where the satellite carrier has not deposited the statement of account and royalty fee required by subsection (b), or has failed to make the submissions to networks required by paragraph (2)(C).

【(5)】 (4) WILLFUL ALTERATIONS.—Notwithstanding the provisions of paragraphs (1) and (2), the secondary transmission to the public by a satellite carrier of a performance or display of a work embodied in a primary transmission made by a non-network station or a network station is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506 and section 510, if the content of the particular program in which the performance or display is embodied, or any commercial advertising or station announcement transmitted by the primary transmitter during, or immediately before or after, the transmission of such program, is in any way willfully altered by the satellite carrier through changes, deletions, or additions, or is combined with programming from any other broadcast signal.

【(6)】 (5) VIOLATION OF TERRITORIAL RESTRICTIONS ON STATUTORY LICENSE FOR NETWORK STATIONS.—

(A) INDIVIDUAL VIOLATIONS.—The willful or repeated secondary transmission by a satellite carrier of a primary transmission made by a network station and embodying a performance or display of a work to a subscriber who is not eligible to receive the transmission under this section is actionable as an act of infringement under section 501 and is fully subject to the remedies provided by sections 502 through 506, except that—

(i) no damages shall be awarded for such act of infringement if the satellite carrier took corrective action by promptly withdrawing service from the ineligible subscriber, and

(ii) any statutory damages shall not exceed \$250 for such subscriber for each month during which the violation occurred.

(B) PATTERN OF VIOLATIONS.—If a satellite carrier engages in a willful or repeated pattern or practice of delivering a primary transmission made by a network station and embodying a performance or display of a work to subscribers who are not eligible to receive the transmission under this section, then in addition to the remedies set forth in subparagraph (A)—

(i) if the pattern or practice has been carried out on a substantially nationwide basis, the court shall order a permanent injunction barring the secondary trans-

mission by the satellite carrier, for private home viewing, of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed \$2,500,000 for each 3-month period during which the pattern or practice was carried out; and

(ii) if the pattern or practice has been carried out on a local or regional basis, the court shall order a permanent injunction barring the secondary transmission, for private home viewing in that locality or region, by the satellite carrier of the primary transmissions of any primary network station affiliated with the same network, and the court may order statutory damages of not to exceed \$2,500,000 for each 6-month period during which the pattern or practice was carried out.

(C) PREVIOUS SUBSCRIBERS EXCLUDED.—Subparagraphs (A) and (B) do not apply to secondary transmissions by a satellite carrier to persons who subscribed to receive such secondary transmissions from the satellite carrier or a distributor before November 16, 1988.

(D) BURDEN OF PROOF.—In any action brought under this paragraph, the satellite carrier shall have the burden of proving that its secondary transmission of a primary transmission by a network station is to a subscriber who is eligible to receive the secondary transmission under this section.

[(E) EXCEPTION.—The secondary transmission by a satellite carrier of a performance or display of a work embodied in a primary transmission made by a network station to subscribers who do not reside in unserved households shall not be an act of infringement if—

[(i) the station on May 1, 1991, was retransmitted by a satellite carrier and was not on that date owned or operated by or affiliated with a television network that offered interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more States;

[(ii) as of July 1, 1998, such station was retransmitted by a satellite carrier under the statutory license of this section; and

[(iii) the station is not owned or operated by or affiliated with a television network that, as of January 1, 1995, offered interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated television licensees in 10 or more States.]

The court shall direct one half of any statutory damages ordered under clause (i) to be deposited with the Register of Copyrights for distribution to copyright owners pursuant to subsection (b). The Copyright Royalty Judges shall issue regulations establishing procedures for distributing such funds, on a proportional basis, to copyright owners whose works were included in the secondary transmissions that were the subject of the statutory damages.

[(7)] (6) DISCRIMINATION BY A SATELLITE CARRIER.—Notwithstanding the provisions of paragraph (1), the willful or re-

peated secondary transmission to the public by a satellite carrier of a performance or display of a work embodied in a primary transmission made by a non-network station or a network station is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, if the satellite carrier unlawfully discriminates against a distributor.

[(8)] (7) GEOGRAPHIC LIMITATION ON SECONDARY TRANSMISSIONS.—The statutory license created by this section shall apply only to secondary transmissions to households located in the United States.

[(9) LOSER PAYS FOR SIGNAL INTENSITY MEASUREMENT; RECOVERY OF MEASUREMENT COSTS IN A CIVIL ACTION.—In any civil action filed relating to the eligibility of subscribing households as unserved households—

[(A) a network station challenging such eligibility shall, within 60 days after receipt of the measurement results and a statement of such costs, reimburse the satellite carrier for any signal intensity measurement that is conducted by that carrier in response to a challenge by the network station and that establishes the household is an unserved household; and

[(B) a satellite carrier shall, within 60 days after receipt of the measurement results and a statement of such costs, reimburse the network station challenging such eligibility for any signal intensity measurement that is conducted by that station and that establishes the household is not an unserved household.

[(10) INABILITY TO CONDUCT MEASUREMENT.—If a network station makes a reasonable attempt to conduct a site measurement of its signal at a subscriber's household and is denied access for the purpose of conducting the measurement, and is otherwise unable to conduct a measurement, the satellite carrier shall within 60 days notice thereof, terminate service of the station's network to that household.]

[(11)] (8) SERVICE TO RECREATIONAL VEHICLES AND COMMERCIAL TRUCKS.—

(A) EXEMPTION.—

(i) IN GENERAL.—For purposes of this subsection, and subject to clauses (ii) and (iii), the term “unserved household” shall include—

(I) recreational vehicles as defined in regulations of the Secretary of Housing and Urban Development under section 3282.8 of title 24, Code of Federal Regulations; and

(II) commercial trucks that qualify as commercial motor vehicles under regulations of the Secretary of Transportation under section 383.5 of title 49, Code of Federal Regulations.

(ii) LIMITATION.—Clause (i) shall apply only to a recreational vehicle or commercial truck if any satellite carrier that proposes to make a secondary transmission of a network station to the operator of such a recreational vehicle or commercial truck complies with

the documentation requirements under subparagraphs (B) and (C).

(iii) EXCLUSION.—For purposes of this subparagraph, the terms “recreational vehicle” and “commercial truck” shall not include any fixed dwelling, whether a mobile home or otherwise.

(B) DOCUMENTATION REQUIREMENTS.—A recreational vehicle or commercial truck shall be deemed to be an unserved household beginning 10 days after the relevant satellite carrier provides to the network that owns or is affiliated with the network station that will be secondarily transmitted to the recreational vehicle or commercial truck the following documents:

(i) DECLARATION.—A signed declaration by the operator of the recreational vehicle or commercial truck that the satellite dish is permanently attached to the recreational vehicle or commercial truck, and will not be used to receive satellite programming at any fixed dwelling.

(ii) REGISTRATION.—In the case of a recreational vehicle, a copy of the current State vehicle registration for the recreational vehicle.

(iii) REGISTRATION AND LICENSE.—In the case of a commercial truck, a copy of—

(I) the current State vehicle registration for the truck; and

(II) a copy of a valid, current commercial driver’s license, as defined in regulations of the Secretary of Transportation under section 383 of title 49, Code of Federal Regulations, issued to the operator.

(C) UPDATED DOCUMENTATION REQUIREMENTS.—If a satellite carrier wishes to continue to make secondary transmissions to a recreational vehicle or commercial truck for more than a 2-year period, that carrier shall provide each network, upon request, with updated documentation in the form described under subparagraph (B) during the 90 days before expiration of that 2-year period.

[(12)] (9) STATUTORY LICENSE CONTINGENT ON COMPLIANCE WITH FCC RULES AND REMEDIAL STEPS.—Notwithstanding any other provision of this section, the willful or repeated secondary transmission to the public by a satellite carrier of a primary transmission embodying a performance or display of a work made by a broadcast station licensed by the Federal Communications Commission is actionable as an act of infringement under section 501, and is fully subject to the remedies provided by sections 502 through 506, if, at the time of such transmission, the satellite carrier is not in compliance with the rules, regulations, and authorizations of the Federal Communications Commission concerning the carriage of television broadcast station signals.

[(13)] WAIVERS.—A subscriber who is denied the secondary transmission of a signal of a network station under subsection (a)(2)(B) may request a waiver from such denial by submitting a request, through the subscriber’s satellite carrier, to the net-

work station asserting that the secondary transmission is prohibited. The network station shall accept or reject a subscriber's request for a waiver within 30 days after receipt of the request. If a television network station fails to accept or reject a subscriber's request for a waiver within the 30-day period after receipt of the request, that station shall be deemed to agree to the waiver request and have filed such written waiver. Unless specifically stated by the network station, a waiver that was granted before the date of the enactment of the Satellite Home Viewer Extension and Reauthorization Act of 2004 under section 339(c)(2) of the Communications Act of 1934, and that was in effect on such date of enactment, shall constitute a waiver for purposes of this paragraph.]

[(14)] (10) RESTRICTED TRANSMISSION OF OUT-OF-STATE DISTANT NETWORK SIGNALS INTO CERTAIN MARKETS.—

(A) OUT-OF-STATE NETWORK AFFILIATES.—Notwithstanding any other provision of this title, the statutory license in this subsection and subsection (b) shall not apply to any secondary transmission of the primary transmission of a network station located outside of the State of Alaska to any subscriber in that State to whom the secondary transmission of the primary transmission of a television station located in that State is made available by the satellite carrier pursuant to section 122.

(B) EXCEPTION.—The limitation in subparagraph (A) shall not apply to the secondary transmission of the primary transmission of a digital signal of a network station located outside of the State of Alaska if at the time that the secondary transmission is made, no television station licensed to a community in the State and affiliated with the same network makes primary transmissions of a digital signal.

(b) DEPOSIT OF STATEMENTS AND FEES; VERIFICATION PROCEDURES.—

(1) DEPOSITS WITH THE REGISTER OF COPYRIGHTS.—A satellite carrier whose secondary transmissions are subject to statutory licensing under subsection (a) shall, on a semiannual basis, deposit with the Register of Copyrights, in accordance with requirements that the Register shall prescribe by regulation—

(A) a statement of account, covering the preceding 6-month period, specifying the names and locations of all non-network stations and network stations whose signals were retransmitted, at any time during that period, to subscribers as described in subsections (a)(1) and (a)(2), the total number of subscribers that received such retransmissions, and such other data as the Register of Copyrights may from time to time prescribe by regulation;

(B) a royalty fee payable to copyright owners pursuant to paragraph (4) for that 6-month period, computed by multiplying the total number of subscribers receiving each secondary transmission of a primary stream or multicast stream of each non-network station or network station during each calendar year month by the appropriate rate in effect under this subsection; and

(C) a filing fee, as determined by the Register of Copyrights pursuant to section 708(a).

(2) VERIFICATION OF ACCOUNTS AND FEE PAYMENTS.—The Register of Copyrights shall issue regulations to permit interested parties to verify and audit the statements of account and royalty fees submitted by satellite carriers under this subsection.

(3) INVESTMENT OF FEES.—The Register of Copyrights shall receive all fees (including the filing fee specified in paragraph (1)(C)) deposited under this section and, after deducting the reasonable costs incurred by the Copyright Office under this section (other than the costs deducted under paragraph (5)), shall deposit the balance in the Treasury of the United States, in such manner as the Secretary of the Treasury directs. All funds held by the Secretary of the Treasury shall be invested in interest-bearing securities of the United States for later distribution with interest by the Librarian of Congress as provided by this title.

(4) PERSONS TO WHOM FEES ARE DISTRIBUTED.—The royalty fees deposited under paragraph (3) shall, in accordance with the procedures provided by paragraph (5), be distributed to those copyright owners whose works were included in a secondary transmission made by a satellite carrier during the applicable 6-month accounting period and who file a claim with the Copyright Royalty Judges under paragraph (5).

(5) PROCEDURES FOR DISTRIBUTION.—The royalty fees deposited under paragraph (3) shall be distributed in accordance with the following procedures:

(A) FILING OF CLAIMS FOR FEES.—During the month of July in each year, each person claiming to be entitled to statutory license fees for secondary transmissions shall file a claim with the Copyright Royalty Judges, in accordance with requirements that the Copyright Royalty Judges shall prescribe by regulation. For purposes of this paragraph, any claimants may agree among themselves as to the proportionate division of statutory license fees among them, may lump their claims together and file them jointly or as a single claim, or may designate a common agent to receive payment on their behalf.

(B) DETERMINATION OF CONTROVERSY; DISTRIBUTIONS.—After the first day of August of each year, the Copyright Royalty Judges shall determine whether there exists a controversy concerning the distribution of royalty fees. If the Copyright Royalty Judges determine that no such controversy exists, the Copyright Royalty Judges shall authorize the Librarian of Congress to proceed to distribute such fees to the copyright owners entitled to receive them, or to their designated agents, subject to the deduction of reasonable administrative costs under this section. If the Copyright Royalty Judges find the existence of a controversy, the Copyright Royalty Judges shall, pursuant to chapter 8 of this title, conduct a proceeding to determine the distribution of royalty fees.

(C) WITHHOLDING OF FEES DURING CONTROVERSY.—During the pendency of any proceeding under this subsection,

the Copyright Royalty Judges shall have the discretion to authorize the Librarian of Congress to proceed to distribute any amounts that are not in controversy.

(c) ADJUSTMENT OF ROYALTY FEES.—

(1) APPLICABILITY AND DETERMINATION OF ROYALTY FEES FOR SIGNALS.—

(A) INITIAL FEE.—The appropriate fee for purposes of determining the royalty fee under subsection (b)(1)(B) for the secondary transmission of the primary transmissions of network stations and non-network stations shall be the appropriate fee set forth in part 258 of title 37, Code of Federal Regulations, as in effect on July 1, 2009, as modified under this paragraph.

(B) FEE SET BY VOLUNTARY NEGOTIATION.—On or before June 1, 2010, the Copyright Royalty Judges shall cause to be published in the Federal Register of the initiation of voluntary negotiation proceedings for the purpose of determining the royalty fee to be paid by satellite carriers for the secondary transmission of the primary transmissions of network stations and non-network stations under subsection (b)(1)(B).

(C) NEGOTIATIONS.—Satellite carriers, distributors, and copyright owners entitled to royalty fees under this section shall negotiate in good faith in an effort to reach a voluntary agreement or agreements for the payment of royalty fees. Any such satellite carriers, distributors and copyright owners may at any time negotiate and agree to the royalty fee, and may designate common agents to negotiate, agree to, or pay such fees. If the parties fail to identify common agents, the Copyright Royalty Judges shall do so, after requesting recommendations from the parties to the negotiation proceeding. The parties to each negotiation proceeding shall bear the cost thereof.

(D) AGREEMENTS BINDING ON PARTIES; FILING OF AGREEMENTS; PUBLIC NOTICE.—

(i) VOLUNTARY AGREEMENTS; FILING.—Voluntary agreements negotiated at any time in accordance with this paragraph shall be binding upon all satellite carriers, distributors, and copyright owners that are parties thereto. Copies of such agreements shall be filed with the Copyright Office within 30 days after execution in accordance with regulations that the Register of Copyrights shall prescribe.

(ii) PROCEDURE FOR ADOPTION OF FEES.—

(I) PUBLICATION OF NOTICE.—Within 10 days after publication in the Federal Register of a notice of the initiation of voluntary negotiation proceedings, parties who have reached a voluntary agreement may request that the royalty fees in that agreement be applied to all satellite carriers, distributors, and copyright owners without convening a proceeding under subparagraph (F).

(II) PUBLIC NOTICE OF FEES.—Upon receiving a request under subclause (I), the Copyright Royalty Judges shall immediately provide public notice of

the royalty fees from the voluntary agreement and afford parties an opportunity to state that they object to those fees.

(III) ADOPTION OF FEES.—The Copyright Royalty Judges shall adopt the royalty fees from the voluntary agreement for all satellite carriers, distributors, and copyright owners without convening the proceeding under subparagraph (F) unless a party with an intent to participate in that proceeding and a significant interest in the outcome of that proceeding objects under subclause (II).

(E) PERIOD AGREEMENT IS IN EFFECT.—The obligation to pay the royalty fees established under a voluntary agreement which has been filed with the Copyright Royalty Judges in accordance with this paragraph shall become effective on the date specified in the agreement[,] and shall remain in effect [until December 31, 2019, or] in accordance with the terms of the agreement[, whichever is later] *until the subscriber for which the royalty is payable is no longer eligible to receive a secondary transmission pursuant to the license under this section.*

(F) FEE SET BY COPYRIGHT ROYALTY JUDGES PROCEEDING.—

(i) NOTICE OF INITIATION OF THE PROCEEDING.—On or before September 1, 2010, the Copyright Royalty Judges shall cause notice to be published in the Federal Register of the initiation of a proceeding for the purpose of determining the royalty fees to be paid for the secondary transmission of the primary transmissions of network stations and non-network stations under subsection (b)(1)(B) by satellite carriers and distributors—

(I) in the absence of a voluntary agreement filed in accordance with subparagraph (D) that establishes royalty fees to be paid by all satellite carriers and distributors; or

(II) if an objection to the fees from a voluntary agreement submitted for adoption by the Copyright Royalty Judges to apply to all satellite carriers, distributors, and copyright owners is received under subparagraph (D) from a party with an intent to participate in the proceeding and a significant interest in the outcome of that proceeding.

Such proceeding shall be conducted under chapter 8.

(ii) ESTABLISHMENT OF ROYALTY FEES.—In determining royalty fees under this subparagraph, the Copyright Royalty Judges shall establish fees for the secondary transmissions of the primary transmissions of network stations and non-network stations that most clearly represent the fair market value of secondary transmissions, except that the Copyright Royalty Judges shall adjust royalty fees to account for the obligations of the parties under any applicable voluntary agreement filed with the Copyright Royalty

Judges in accordance with subparagraph (D). In determining the fair market value, the Judges shall base their decision on economic, competitive, and programming information presented by the parties, including—

(I) the competitive environment in which such programming is distributed, the cost of similar signals in similar private and compulsory license marketplaces, and any special features and conditions of the retransmission marketplace;

(II) the economic impact of such fees on copyright owners and satellite carriers; and

(III) the impact on the continued availability of secondary transmissions to the public.

(iii) **EFFECTIVE DATE FOR DECISION OF COPYRIGHT ROYALTY JUDGES.**—The obligation to pay the royalty fees established under a determination that is made by the Copyright Royalty Judges in a proceeding under this paragraph shall be effective as of January 1, 2010.

(iv) **PERSONS SUBJECT TO ROYALTY FEES.**—The royalty fees referred to in clause (iii) shall be binding on all satellite carriers, distributors and copyright owners, who are not party to a voluntary agreement filed with the Copyright Office under subparagraph (D).

(2) **ANNUAL ROYALTY FEE ADJUSTMENT.**—Effective January 1 of each year, the royalty fee payable under subsection (b)(1)(B) for the secondary transmission of the primary transmissions of network stations and non-network stations shall be adjusted by the Copyright Royalty Judges to reflect any changes occurring in the cost of living as determined by the most recent Consumer Price Index (for all consumers and for all items) published by the Secretary of Labor before December 1 of the preceding year. Notification of the adjusted fees shall be published in the Federal Register at least 25 days before January 1.

(d) **DEFINITIONS.**—As used in this section—

(1) **DISTRIBUTOR.**—The term “distributor” means an entity that contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers or indirectly through other program distribution entities in accordance with the provisions of this section.

(2) **NETWORK STATION.**—The term “network station” means—

(A) a television station licensed by the Federal Communications Commission, including any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station, that is owned or operated by, or affiliated with, one or more of the television networks in the United States that offer an interconnected program service on a regular basis for 15 or more hours per week to at least 25 of its affiliated television licensees in 10 or more States; or

(B) a noncommercial educational broadcast station (as defined in section 397 of the Communications Act of 1934);

except that the term does not include the signal of the Alaska Rural Communications Service, or any successor entity to that service.

(3) PRIMARY NETWORK STATION.—The term “primary network station” means a network station that broadcasts or rebroadcasts the basic programming service of a particular national network.

(4) PRIMARY TRANSMISSION.—The term “primary transmission” has the meaning given that term in section 111(f) of this title.

(5) PRIVATE HOME VIEWING.—The term “private home viewing” means the viewing, for private use in a household by means of satellite reception equipment that is operated by an individual in that household and that serves only such household, of a secondary transmission delivered by a satellite carrier of a primary transmission of a television station licensed by the Federal Communications Commission.

(6) SATELLITE CARRIER.—The term “satellite carrier” means an entity that uses the facilities of a satellite or satellite service licensed by the Federal Communications Commission and operates in the Fixed-Satellite Service under part 25 of title 47, Code of Federal Regulations, or the Direct Broadcast Satellite Service under part 100 of title 47, Code of Federal Regulations, to establish and operate a channel of communications for point-to-multipoint distribution of television station signals, and that owns or leases a capacity or service on a satellite in order to provide such point-to-multipoint distribution, except to the extent that such entity provides such distribution pursuant to tariff under the Communications Act of 1934, other than for private home viewing pursuant to this section.

(7) SECONDARY TRANSMISSION.—The term “secondary transmission” has the meaning given that term in section 111(f) of this title.

(8) SUBSCRIBER; SUBSCRIBE.—

(A) SUBSCRIBER.—The term “subscriber” means a person or entity that receives a secondary transmission service from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

(B) SUBSCRIBE.—The term “subscribe” means to elect to become a subscriber.

(9) NON-NETWORK STATION.—The term “non-network station” means a television station, other than a network station, licensed by the Federal Communications Commission, that is secondarily transmitted by a satellite carrier.

(10) UNSERVED HOUSEHOLD.—The term “unserved household”, with respect to a particular television network, means a household that—

[(A) cannot receive, through the use of an antenna, an over-the-air signal containing the primary stream, or, on or after the qualifying date, the multicast stream, originating in that household’s local market and affiliated with that network of—

[(i) if the signal originates as an analog signal, Grade B intensity as defined by the Federal Commu-

nications Commission in section 73.683(a) of title 47, Code of Federal Regulations, as in effect on January 1, 1999; or

[(ii) if the signal originates as a digital signal, intensity defined in the values for the digital television noise-limited service contour, as defined in regulations issued by the Federal Communications Commission (section 73.622(e) of title 47, Code of Federal Regulations), as such regulations may be amended from time to time;

[(B) is subject to a waiver that meets the standards of subsection (a)(13), whether or not the waiver was granted before the date of the enactment of the Satellite Television Extension and Localism Act of 2010;

[(C) is a subscriber to whom subsection (e) applies;]

[(D)] (A) is a subscriber to whom [subsection (a)(11)] subsection (a)(8) applies; or

[(E) is a subscriber to whom the exemption under subsection (a)(2)(B)(iii) applies.]

(B) is a subscriber located in a short market.

(11) LOCAL MARKET.—The term “local market” has the meaning given such term under section 122(j).

(12) COMMERCIAL ESTABLISHMENT.—The term “commercial establishment”—

(A) means an establishment used for commercial purposes, such as a bar, restaurant, private office, fitness club, oil rig, retail store, bank or other financial institution, supermarket, automobile or boat dealership, or any other establishment with a common business area; and

(B) does not include a multi-unit permanent or temporary dwelling where private home viewing occurs, such as a hotel, dormitory, hospital, apartment, condominium, or prison.

[(13) QUALIFYING DATE.—The term “qualifying date”, for purposes of paragraph (10)(A), means—

[(A) October 1, 2010, for multicast streams that exist on March 31, 2010; and

[(B) January 1, 2011, for all other multicast streams.]

[(14)] (13) MULTICAST STREAM.—The term “multicast stream” means a digital stream containing programming and program-related material affiliated with a television network, other than the primary stream.

[(15)] (14) PRIMARY STREAM.—The term “primary stream” means—

(A) the single digital stream of programming as to which a television broadcast station has the right to mandatory carriage with a satellite carrier under the rules of the Federal Communications Commission in effect on July 1, 2009; or

(B) if there is no stream described in subparagraph (A), then either—

(i) the single digital stream of programming associated with the network last transmitted by the station as an analog signal; or

(ii) if there is no stream described in clause (i), then the single digital stream of programming affiliated with the network that, as of July 1, 2009, had been offered by the television broadcast station for the longest period of time.

(15) *LOCAL-INTO-LOCAL SERVICE TO ALL DMAS.*—The term “local-into-local service to all DMAs” has the meaning given such term in subsection (f)(7).

(16) *SHORT MARKET.*—The term “short market” means a local market in which programming of one or more of the four most widely viewed television networks nationwide is not offered on either the primary stream or multicast stream transmitted by any network station in that market.

[(e) *MORATORIUM ON COPYRIGHT LIABILITY.*—Until December 31, 2019, a subscriber who does not receive a signal of Grade A intensity (as defined in the regulations of the Federal Communications Commission under section 73.683(a) of title 47, Code of Federal Regulations, as in effect on January 1, 1999, or predicted by the Federal Communications Commission using the Individual Location Longley-Rice methodology described by the Federal Communications Commission in Docket No. 98–201) of a local network television broadcast station shall remain eligible to receive signals of network stations affiliated with the same network, if that subscriber had satellite service of such network signal terminated after July 11, 1998, and before October 31, 1999, as required by this section, or received such service on October 31, 1999.]

[(f)] (e) *EXPEDITED CONSIDERATION BY JUSTICE DEPARTMENT OF VOLUNTARY AGREEMENTS TO PROVIDE SATELLITE SECONDARY TRANSMISSIONS TO LOCAL MARKETS.*—

(1) *IN GENERAL.*—In a case in which no satellite carrier makes available, to subscribers located in a local market, as defined in section 122(j)(2), the secondary transmission into that market of a primary transmission of one or more television broadcast stations licensed by the Federal Communications Commission, and two or more satellite carriers request a business review letter in accordance with section 50.6 of title 28, Code of Federal Regulations (as in effect on July 7, 2004), in order to assess the legality under the antitrust laws of proposed business conduct to make or carry out an agreement to provide such secondary transmission into such local market, the appropriate official of the Department of Justice shall respond to the request no later than 90 days after the date on which the request is received.

(2) *DEFINITION.*—For purposes of this subsection, the term “antitrust laws”—

(A) has the meaning given that term in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent such section 5 applies to unfair methods of competition; and

(B) includes any State law similar to the laws referred to in paragraph (1).

[(g)] (f) *CERTAIN WAIVERS GRANTED TO PROVIDERS OF LOCAL-INTO-LOCAL SERVICE TO ALL DMAS.*—

(1) INJUNCTION WAIVER.—A court that issued an injunction pursuant to **subsection (a)(7)(B)** *subsection (a)(5)(B)* before the date of the enactment of this subsection shall waive such injunction if the court recognizes the entity against which the injunction was issued as a qualified carrier.

(2) LIMITED TEMPORARY WAIVER.—

(A) IN GENERAL.—Upon a request made by a satellite carrier, a court that issued an injunction against such carrier under **subsection (a)(7)(B)** *subsection (a)(5)(B)* before the date of the enactment of this subsection shall waive such injunction with respect to the statutory license provided under subsection (a)(2) to the extent necessary to allow such carrier to make secondary transmissions of primary transmissions made by a network station to unserved households located in short markets in which such carrier was not providing local service pursuant to the license under section 122 as of December 31, 2009.

(B) EXPIRATION OF TEMPORARY WAIVER.—A temporary waiver of an injunction under subparagraph (A) shall expire after the end of the 120-day period beginning on the date such temporary waiver is issued unless extended for good cause by the court making the temporary waiver.

(C) FAILURE TO PROVIDE LOCAL-INTO-LOCAL SERVICE TO ALL DMAS.—

(i) FAILURE TO ACT REASONABLY AND IN GOOD FAITH.—If the court issuing a temporary waiver under subparagraph (A) determines that the satellite carrier that made the request for such waiver has failed to act reasonably or has failed to make a good faith effort to provide local-into-local service to all DMAs, such failure—

(I) is actionable as an act of infringement under section 501 and the court may in its discretion impose the remedies provided for in sections 502 through 506 and subsection (a)(6)(B) of this section; and

(II) shall result in the termination of the waiver issued under subparagraph (A).

(ii) FAILURE TO PROVIDE LOCAL-INTO-LOCAL SERVICE.—If the court issuing a temporary waiver under subparagraph (A) determines that the satellite carrier that made the request for such waiver has failed to provide local-into-local service to all DMAs, but determines that the carrier acted reasonably and in good faith, the court may in its discretion impose financial penalties that reflect—

(I) the degree of control the carrier had over the circumstances that resulted in the failure;

(II) the quality of the carrier's efforts to remedy the failure; and

(III) the severity and duration of any service interruption.

(D) SINGLE TEMPORARY WAIVER AVAILABLE.—An entity may only receive one temporary waiver under this paragraph.

(E) SHORT MARKET DEFINED.—For purposes of this paragraph, the term “short market” means a local market in which programming of one or more of the four most widely viewed television networks nationwide as measured on the date of the enactment of this subsection is not offered on the primary stream transmitted by any local television broadcast station.

(3) ESTABLISHMENT OF QUALIFIED CARRIER RECOGNITION.—

(A) STATEMENT OF ELIGIBILITY.—An entity seeking to be recognized as a qualified carrier under this subsection shall file a statement of eligibility with the court that imposed the injunction. A statement of eligibility must include—

- (i) an affidavit that the entity is providing local-into-local service to all DMAs;
- (ii) a motion for a waiver of the injunction;
- (iii) a motion that the court appoint a special master under Rule 53 of the Federal Rules of Civil Procedure;
- (iv) an agreement by the carrier to pay all expenses incurred by the special master under paragraph (4)(B)(ii); and
- (v) a certification issued pursuant to section 342(a) of Communications Act of 1934.

(B) GRANT OF RECOGNITION AS A QUALIFIED CARRIER.—Upon receipt of a statement of eligibility, the court shall recognize the entity as a qualified carrier and issue the waiver under paragraph (1). Upon motion pursuant to subparagraph (A)(iii), the court shall appoint a special master to conduct the examination and provide a report to the court as provided in paragraph (4)(B).

(C) VOLUNTARY TERMINATION.—At any time, an entity recognized as a qualified carrier may file a statement of voluntary termination with the court certifying that it no longer wishes to be recognized as a qualified carrier. Upon receipt of such statement, the court shall reinstate the injunction waived under paragraph (1).

(D) LOSS OF RECOGNITION PREVENTS FUTURE RECOGNITION.—No entity may be recognized as a qualified carrier if such entity had previously been recognized as a qualified carrier and subsequently lost such recognition or voluntarily terminated such recognition under subparagraph (C).

(4) QUALIFIED CARRIER OBLIGATIONS AND COMPLIANCE.—

(A) CONTINUING OBLIGATIONS.—

(i) IN GENERAL.—An entity recognized as a qualified carrier shall continue to provide local-into-local service to all DMAs.

(ii) COOPERATION WITH COMPLIANCE EXAMINATION.—An entity recognized as a qualified carrier shall fully cooperate with the special master appointed by the court under paragraph (3)(B) in an examination set forth in subparagraph (B).

(B) QUALIFIED CARRIER COMPLIANCE EXAMINATION.—

(i) EXAMINATION AND REPORT.—A special master appointed by the court under paragraph (3)(B) shall con-

duct an examination of, and file a report on, the qualified carrier's compliance with the royalty payment and household eligibility requirements of the license under this section. The report shall address the qualified carrier's conduct during the period beginning on the date on which the qualified carrier is recognized as such under paragraph (3)(B) and ending on April 30, 2012.

(ii) RECORDS OF QUALIFIED CARRIER.—Beginning on the date that is one year after the date on which the qualified carrier is recognized as such under paragraph (3)(B), but not later than December 1, 2011, the qualified carrier shall provide the special master with all records that the special master considers to be directly pertinent to the following requirements under this section:

(I) Proper calculation and payment of royalties under the statutory license under this section.

(II) Provision of service under this license to eligible subscribers only.

(iii) SUBMISSION OF REPORT.—The special master shall file the report required by clause (i) not later than July 24, 2012, with the court referred to in paragraph (1) that issued the injunction, and the court shall transmit a copy of the report to the Register of Copyrights, the Committees on the Judiciary and on Energy and Commerce of the House of Representatives, and the Committees on the Judiciary and on Commerce, Science, and Transportation of the Senate.

(iv) EVIDENCE OF INFRINGEMENT.—The special master shall include in the report a statement of whether the examination by the special master indicated that there is substantial evidence that a copyright holder could bring a successful action under this section against the qualified carrier for infringement.

(v) SUBSEQUENT EXAMINATION.—If the special master's report includes a statement that its examination indicated the existence of substantial evidence that a copyright holder could bring a successful action under this section against the qualified carrier for infringement, the special master shall, not later than 6 months after the report under clause (i) is filed, initiate another examination of the qualified carrier's compliance with the royalty payment and household eligibility requirements of the license under this section since the last report was filed under clause (iii). The special master shall file a report on the results of the examination conducted under this clause with the court referred to in paragraph (1) that issued the injunction, and the court shall transmit a copy to the Register of Copyrights, the Committees on the Judiciary and on Energy and Commerce of the House of Representatives, and the Committees on the Judiciary and on Commerce, Science, and Transportation of the Senate. The report shall include a statement described in clause (iv).

(vi) COMPLIANCE.—Upon motion filed by an aggrieved copyright owner, the court recognizing an entity as a qualified carrier shall terminate such designation upon finding that the entity has failed to cooperate with an examination required by this subparagraph.

(vii) OVERSIGHT.—During the period of time that the special master is conducting an examination under this subparagraph, the Comptroller General shall monitor the degree to which the entity seeking to be recognized or recognized as a qualified carrier under paragraph (3) is complying with the special master's examination. The qualified carrier shall make available to the Comptroller General all records and individuals that the Comptroller General considers necessary to meet the Comptroller General's obligations under this clause. The Comptroller General shall report the results of the monitoring required by this clause to the Committees on the Judiciary and on Energy and Commerce of the House of Representatives and the Committees on the Judiciary and on Commerce, Science, and Transportation of the Senate at intervals of not less than six months during such period.

(C) AFFIRMATION.—A qualified carrier shall file an affidavit with the district court and the Register of Copyrights 30 months after such status was granted stating that, to the best of the affiant's knowledge, it is in compliance with the requirements for a qualified carrier. The qualified carrier shall attach to its affidavit copies of all reports or orders issued by the court, the special master, and the Comptroller General.

(D) COMPLIANCE DETERMINATION.—Upon the motion of an aggrieved television broadcast station, the court recognizing an entity as a qualified carrier may make a determination of whether the entity is providing local-into-local service to all DMAs.

(E) PLEADING REQUIREMENT.—In any motion brought under subparagraph (D), the party making such motion shall specify one or more designated market areas (as such term is defined in section 122(j)(2)(C)) for which the failure to provide service is being alleged, and, for each such designated market area, shall plead with particularity the circumstances of the alleged failure.

(F) BURDEN OF PROOF.—In any proceeding to make a determination under subparagraph (D), and with respect to a designated market area for which failure to provide service is alleged, the entity recognized as a qualified carrier shall have the burden of proving that the entity provided local-into-local service with a good quality satellite signal to at least 90 percent of the households in such designated market area (based on the most recent census data released by the United States Census Bureau) at the time and place alleged.

(5) FAILURE TO PROVIDE SERVICE.—

(A) PENALTIES.—If the court recognizing an entity as a qualified carrier finds that such entity has willfully failed to provide local-into-local service to all DMAs, such finding shall result in the loss of recognition of the entity as a qualified carrier and the termination of the waiver provided under paragraph (1), and the court may, in its discretion—

(i) treat such failure as an act of infringement under section 501, and subject such infringement to the remedies provided for in sections 502 through 506 and subsection (a)(6)(B) of this section; and

(ii) impose a fine of not less than \$250,000 and not more than \$5,000,000.

(B) EXCEPTION FOR NONWILLFUL VIOLATION.—If the court determines that the failure to provide local-into-local service to all DMAs is nonwillful, the court may in its discretion impose financial penalties for noncompliance that reflect—

(i) the degree of control the entity had over the circumstances that resulted in the failure;

(ii) the quality of the entity's efforts to remedy the failure and restore service; and

(iii) the severity and duration of any service interruption.

(6) PENALTIES FOR VIOLATIONS OF LICENSE.—A court that finds, under subsection (a)(6)(A), that an entity recognized as a qualified carrier has willfully made a secondary transmission of a primary transmission made by a network station and embodying a performance or display of a work to a subscriber who is not eligible to receive the transmission under this section shall reinstate the injunction waived under paragraph (1), and the court may order statutory damages of not more than \$2,500,000.

(7) LOCAL-INTO-LOCAL SERVICE TO ALL DMAS DEFINED.—For purposes of this subsection:

(A) IN GENERAL.—An entity provides “local-into-local service to all DMAs” if the entity provides local service in all designated market areas (as such term is defined in section 122(j)(2)(C)) pursuant to the license under section 122.

(B) HOUSEHOLD COVERAGE.—For purposes of subparagraph (A), an entity that makes available local-into-local service with a good quality satellite signal to at least 90 percent of the households in a designated market area based on the most recent census data released by the United States Census Bureau shall be considered to be providing local service to such designated market area.

(C) GOOD QUALITY SATELLITE SIGNAL DEFINED.—The term “good quality satellite signal” has the meaning given such term under section 342(e)(2) of Communications Act of 1934.

[(h) TERMINATION OF LICENSE.—This section shall cease to be effective on December 31, 2019.]

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CHAPTER 5—COPYRIGHT INFRINGEMENT AND REMEDIES

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§ 501. Infringement of copyright

(a) Anyone who violates any of the exclusive rights of the copyright owner as provided by sections 106 through 122 or of the author as provided in section 106A(a), or who imports copies or phonorecords into the United States in violation of section 602, is an infringer of the copyright or right of the author, as the case may be. For purposes of this chapter (other than section 506), any reference to copyright shall be deemed to include the rights conferred by section 106A(a). As used in this subsection, the term “anyone” includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity.

(b) The legal or beneficial owner of an exclusive right under a copyright is entitled, subject to the requirements of section 411, to institute an action for any infringement of that particular right committed while he or she is the owner of it. The court may require such owner to serve written notice of the action with a copy of the complaint upon any person shown, by the records of the Copyright Office or otherwise, to have or claim an interest in the copyright, and shall require that such notice be served upon any person whose interest is likely to be affected by a decision in the case. The court may require the joinder, and shall permit the intervention, of any person having or claiming an interest in the copyright.

(c) For any secondary transmission by a cable system that embodies a performance or a display of a work which is actionable as an act of infringement under subsection (c) of section 111, a television broadcast station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that television station.

(d) For any secondary transmission by a cable system that is actionable as an act of infringement pursuant to section 111(c)(3), the following shall also have standing to sue: (i) the primary transmitter whose transmission has been altered by the cable system; and (ii) any broadcast station within whose local service area the secondary transmission occurs.

(e) With respect to any secondary transmission that is made by a satellite carrier of a performance or display of a work embodied in a primary transmission and is actionable as an act of infringement under ~~section 119(a)(5)~~ *section 119(a)(3)*, a network station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local service area of that station.

(f)(1) With respect to any secondary transmission that is made by a satellite carrier of a performance or display of a work embodied

in a primary transmission and is actionable as an act of infringement under section 122, a television broadcast station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local market of that station.

(2) A television broadcast station may file a civil action against any satellite carrier that has refused to carry television broadcast signals, as required under section 122(a)(2), to enforce that television broadcast station's rights under section 338(a) of the Communications Act of 1934.

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